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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LACEY MARKETPLACE
11 ASSOCIATES II, LLC,

12 Plaintiff,

13 v.

14 UNITED FARMERS OF ALBERTA
15 COOPERATIVE LTD, et al.,

Defendants.

CASE NO. C13-0383JLR

ORDER DENYING
PREJUDGMENT INTEREST

16 BURLINGTON RETAIL, LLC,

17 Plaintiff,

18 v.

19 UNITED FARMERS OF ALBERTA
20 COOPERATIVE LTD, et al.,

21 Defendants.
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CASE NO. C13-0384JLR

1 In the wake of a jury verdict in their favor, Plaintiffs now move for an award of
2 prejudgment interest. (*See* Pre. Int. Mot. (Dkt. # 193).) At trial, Plaintiffs requested two
3 types of damages: (1) missed rental payments and (2) costs of procuring new tenants
4 (“re-tenanting costs”). (*See, e.g.*, Dkt. # 227 at 968:19-069:9, 971:1-20 (Plaintiffs’
5 closing argument); Tr. Exs. 217-220.) The jury awarded each Plaintiff the full amount of
6 requested damages. (*See* Verdict (Dkt. # 187).) Plaintiffs now request an award of
7 prejudgment interest for the re-tenanting costs only. (*See* Pre. Int. Mot. at 1.)

8 In diversity cases, pre-judgment interest is governed by state law. *Fid. Fed. Bank,*
9 *FSB v. Durga Ma Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004). In Washington, a “court
10 may award a party prejudgment interest when the claimed amount is ‘liquidated’ or when
11 an unliquidated claim is otherwise determinable by reference to a fixed contractual
12 standard, without reliance on opinion or discretion.” *Forbes v. Am. Bldg. Maint. Co. W.*,
13 240 P.3d 790, 793-94 (Wash. 2010). A claim is liquidated when the amount of
14 prejudgment interest can be computed with exactness from the evidence, without reliance
15 on opinion or discretion.” *Id.* A claim is unliquidated where “the exact amount of the
16 sum to be allowed cannot be definitely fixed from the facts proved, disputed or
17 undisputed, but must in the last analysis depend upon the opinion or discretion of the
18 judge or jury as to whether a larger or a smaller amount should be allowed.” *Prier v.*
19 *Refrigeration Eng’g Co.*, 442 P.2d 621, 626 (Wash. 1968). However, the fact that a
20 claim is disputed does not render the amount unliquidated. *Id.* Rather, “it is the character
21 of the claim and not of the defense that is determinative of the question whether an
22 amount of money sued for is a ‘liquidated sum.’” *Id.*

1 Plaintiffs contend that their re-tenanting costs constitute a liquidated sum because
2 the costs are evidenced by invoices. (Pre. Int. Mot. at 2.) Plaintiffs reason that calculating
3 the amount due required no discretion because, once liability was found, the damages
4 equaled the sum of the invoices for the re-tenanting construction. (*Id.* at 3.)

5 The court is unpersuaded. Although the amount of money Plaintiffs' expended
6 while re-tenanting their properties was a sum certain, the amount of money Plaintiffs
7 were entitled to recover from Defendants was not. *See Car Wash Enters., Inc. v.*
8 *Kampanos*, 874 P.2d 868, 875 (Wash. Ct. App. 1994). Rather, Plaintiffs were only
9 entitled to "recover the remodeling costs to the extent the costs were *reasonably*
10 *necessary* in order to re-let the properties and not capital improvements." (Jury Ins. (Dkt.
11 # 183) (Instruction No. 21) (emphasis added).) The factors relevant to determining
12 whether a given cost constituted a capital improvement included "whether the remodeling
13 substantially increased the value of the premises and whether the remodeling included
14 major, permanent structural changes." (*Id.*)

15 Washington courts have consistently declined to award prejudgment interest when
16 the damages determination required the factfinder to determine "reasonableness" or to
17 otherwise weigh conflicting testimony to determine the measure of damages. *See*
18 *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 15 P.3d 115, 133 (Wash. 2000), *as*
19 *amended* (Jan. 16, 2001) (finding that damages were unliquidated because "establishing
20 [the] damages required testimony allocating certain vendor bills between environmental
21 remediation (for which coverage existed) and capital improvements (for which it did
22 not)"); *Hansen v. Rothaus*, 730 P.2d 662, 667 (Wash. 1986) ("Because reliance upon

1 opinion and discretion is necessary in determining whether the amounts expended were
 2 reasonably necessary and reasonable in amount, medical expenses are unliquidated.”); *id.*
 3 (“Clearly, the settlement . . . paid and the costs of defending and settling the injured crew
 4 member’s suit are unliquidated. These amounts are recoverable only if reasonable in
 5 amount.”).¹ In so holding, courts have reasoned that, because the determination of
 6 reasonableness necessarily implicates an exercise of discretion, a defendant could not
 7 determine *ex ante* the amount that should be paid. *See Weyerhaeuser Co.*, 15 P.3d at 133;
 8 *Hansen*, 730 P.2d at 667; *Kiewit-Grice v. State*, 895 P.2d 6, 9 (Wash. Ct. App. 1995)
 9 (“Where a defendant has challenged the reasonableness of the amount awarded for extra
 10 work arising outside of the contract, the award is unliquidated, because reliance upon
 11 opinion and discretion was necessary in determining the reasonableness of the amounts
 12 expended. A claim is unliquidated if the principal must be arrived at by a determination
 13 of reasonableness.”) (internal quotations omitted)).

14 That same reasoning applies here. At trial, all parties put forth evidence and
 15 argument disputing whether the claimed remodeling costs were reasonably necessary and

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 17 ¹ *See also Tri-M Erectors, Inc. v. Donald M. Drake Co.*, 618 P.2d 1341, 1346 (Wash. 1980) (“A
 18 claim is unliquidated if the principal must be arrived at by a determination of reasonableness.”); *Ski Acres*
 19 *Dev. Co. v. Douglas G. Gorman, Inc.*, 508 P.2d 1381, 1385 (Wash. Ct. App. 1973) (“In this case there
 20 was a question of the reasonableness of the cost of repairs and until that was resolved by the jury, the
 21 claim was unliquidated.”); *Aker Verdal A/S v. Neil F. Lampson, Inc.*, 828 P.2d 610, 617-18 (Wash. Ct.
 22 App. 1992) (“Since it was within the jury’s discretion to determine a reasonable hourly rate, the labor
 costs were unliquidated.”); *Douglas Nw., Inc. v. Bill O’Brien & Sons Const., Inc.*, 828 P.2d 565, 582-83
 (Wash. Ct. App. 1992) (“There was disputed testimony here concerning the proper computation method
 for deriving hourly equipment rates, with experts for both sides giving their opinions. The trial court was
 thus forced to rely on opinion testimony, and a measure of discretion was involved. This claim was not
 liquidated.”). *Segall v. Ben’s Truck Parts, Inc.*, 488 P.2d 790, 793 (Wash. Ct. App. 1971) (“Where . . .
 the trial court must exercise its discretion as to what evidence to give credit to and what amount to use in
 its computations, without reference to a contractual standard of the parties, the denial of interest was
 proper.”).

1 whether they constituted capital improvements. (*See, e.g.*, 3/6/15 Tr. Trans. (Dkt. # 227)
2 at 968:19-069:9, 971:1-20 (Plaintiffs’ closing argument); 997:1-98:25 (Defendants’
3 closing argument); Tr. Exs. 217-220.) Contrary to Plaintiffs’ contention, upon a finding
4 of liability, the jury could not merely sum the invoices to arrive at a damages figure.
5 Rather, the jury had to consider, in light of both sides’ evidence, whether each claimed
6 cost was reasonably necessary to re-let the premises (which was recoverable), and
7 whether it resulted from a capital improvement (which was not recoverable). (*See* Jury
8 Inst. No. 21.) Those decisions necessarily implicated an exercise of discretion. *See*
9 *Weyerhaeuser Co.*, 15 P.3d at 133; *Hansen*, 730 P.2d at 667; *Kiewit-Grice*, 895 P.2d at 9.
10 That the jury ultimately awarded all of Plaintiffs’ requested costs does not change the fact
11 that, before the jury’s verdict, it was uncertain what amount Defendants owed. *See*
12 *Hansen*, 730 P.2d at 665 (“A defendant should not . . . be required to pay prejudgment
13 interest in cases where he is unable to ascertain the amount he owes to the plaintiff.”);
14 *Maryhill Museum of Fine Arts v. Emil’s Concrete Const. Co.*, 751 P.2d 866, 869 (Wash.
15 Ct. App. 1988) (“In the present case, the costs and extent of the repairs were disputed.
16 The court used its discretion in determining the reasonable cost of the repairs would be
17 the original contract cost of the project. Until that decision was made, the amount was
18 not liquidated.”).

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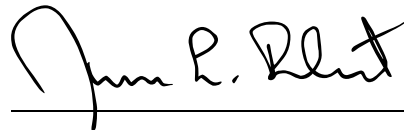
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1 Consequently, the court concludes that Plaintiffs' re-tenanting damages were
2 unliquidated. Therefore, the court DENIES Plaintiffs' motion for prejudgment interest
3 (Dkt. # 193).

4 Dated this 11th day of May, 2015.

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7 JAMES L. ROBART
8 United States District Judge
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